IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.MC.No. 1521 of 2004(A)

AGAINST THE ORDER DATED 03/07/2004 IN CMP 2038/04 IN CMP.2037/2004 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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PETITIONER: ACCUSED:

MARTIN @ POTTY MARTIN, S/O. DEVASSYKUTTY
PADAYATTY HOUSE, CHENGAL KARA,
KANJOOR VADAKKUMBHAGAM VILLAGE.

BY ADV. SRI.K.VINOD CHANDRAN

RESPONDENTS: PETITIONER:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI K.C.SANTHOSH KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

CRL.M.C.No.1521 OF 2004

Dated this the 10th day of August, 2007

O R D E R

This petition is filed to set aside the order passed by the Magistrate's Court, Perumbavoor, cancelling the bail granted by the Sessions Court. According to the petitioner, bail was granted to him by the Sessions Court on 17/2/2004 on certain conditions. One of the conditions was that he shall not involve in any offence pending trial of the case, and if so involved, the learned Magistrate is free to cancel the bail, as if it was granted by that court. The said order is Annexure-A.

2. The petitioner was abiding by the conditions; but a crime was registered as Crime No.204/04 against the petitioner, with the sole alleged intention of seeking cancellation of the bail. Petitioner is absolutely innocent of the allegations made in the latter case. The defacto complainant in the said case filed an affidavit before the Magistrate's Court, a copy of which is produced as Annexure-D, stating that the petitioner was not involved in the crime and that the name of the accused was mentioned to the police on the information supplied by his friends. The learned counsel

appearing for the petitioner submitted that it is without considering the said affidavit that the bail was cancelled by the learned Magistrate.

3. Heard both sides. The learned counsel appearing for the petitioner fairly conceded that the learned Magistrate cancelled the bail granted by the Sessions Court, since it was authorised to do so as held in **Thammanam Shaji v. State of Kerala (2005(4) KLT 856(SC)).** Therefore, the lst ground raised in the petition is not sustainable. However, it was pointed that Annexure-D, an affidavit filed by the defacto complainant, was not considered by the learned Magistrate, though it was filed as early as on 20/4/2004, while cancelling the bail. Had the affidavit been considered, it would be clear that the petitioner had not violated the bail conditions and he is totally innocent of the allegations made in the latter complaint and he has abided by the conditions in not getting involved in any crime pending trial.

4. The contents of Annexure-D affidavit reveal that the petitioner's name was dragged in a subsequent case only on misunderstanding. But the said fact was omitted to be considered by the learned Magistrate and hence the cancellation of the bail on the ground that the petitioner violated the condition by committing another crime pending trial of the cases,

cannot be sustained. Though the affidavit was filed in the court even before consideration of the application for cancellation of bail, the court below failed to consider the same. The cancellation of bail, in the absence of consideration of relevant materials, is not proper. The order under challenge is, therefore, liable to be set aside and I do so.

Petition is allowed.

K.HEMA,
Judge.

kcv.